



[7590-01-P]

## NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50-029 and 72-31; NRC-2012-0229]

### Yankee Atomic Electric Company

### Yankee Rowe Independent Spent Fuel Storage Installation, Staff Evaluation;

### Exemption

#### 1.0 BACKGROUND

Yankee Atomic Electric Company (YAEC, the licensee) is the holder of Facility Operating License No. DPR-3 which authorizes possession of nuclear fuel under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. Per 10 CFR part 72, Subpart K, a general license is issued for the storage of spent fuel in an Independent Spent Fuel Storage Installation (ISFSI) to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. Thus, YAEC also holds a 10 CFR part 72 general license for storage of spent fuel and greater than Class C waste at the Yankee Rowe ISFSI in Rowe, Massachusetts.

The Yankee Nuclear Power Station (YNPS) was a Pressurized Water Reactor in Rowe, Massachusetts, operated by the Yankee Atomic Electric Company (YAEC). By February 26, 1992, the reactor core was removed, and YNPS had permanently shut down. On February 27, 1992, YAEC notified the NRC that power generating operations at YNPS had permanently ceased. On August 5, 1992, the NRC amended the license for YNPS to "Possession Only." Currently, all remaining fuel on-site at the facility is stored in dry cask storage at a stand-alone ISFSI.

The Power Reactor Security Rule, which applies to all 10 CFR part 50 licensees, was revised on March 27, 2009, with compliance required by March 31, 2010 (74 FR 13926). The NRC held a webinar on July 20, 2010, to provide clarification on the applicability of the power reactor security regulations to 10 CFR part 50 licensees undergoing decommissioning or 10 CFR part 50 licensees that have only a general licensed ISFSI. On August 2, 2010, the NRC issued a letter to YAEC clarifying the applicability of the revised power reactor security regulations to a part 50 licensee undergoing decommissioning or a part 50 licensee that has only a general licensed ISFSI (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102160023). In the August 2, 2010, letter, the NRC noted that there are currently no security or health and safety gaps at these facilities that may not be in compliance with the current 10 CFR 73.55 requirements because the Security Plans at these facilities meet the baseline requirements of the previous version of 10 CFR 73.55 and also meet the requirements of subsequent NRC security orders. The NRC requested a response be submitted within 120 days of receipt of the August 2, 2010, letter.

By letter dated November 30, 2010 (ADAMS Accession No. ML103550172), YAEC responded to the August 2, 2010, letter. In its response, YAEC requested exemption from certain regulations in 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," which it considered either not applicable or caused an undue burden to a stand-alone ISFSI. As part of its response, YAEC submitted a matrix which described how YAEC either complied with the new rule and applicable orders or needed an exemption. In addition, YAEC clarified that their intent in submitting the exemption request was to maintain its NRC-approved Physical Security Plan (PSP). In addition, YAEC noted that the statement of consideration for the Power Reactor Security Rule states that the Commission did not intend to make changes to the substantive requirements of 10 CFR 72.212 and that the Commission has initiated a separate rulemaking to revise the ISFSI security requirements (74 FR 13958).

## **2.0 DISCUSSION**

Pursuant to 10 CFR 73.5, "Specific Exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements in 10 CFR part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. The NRC evaluated the exemption requests submitted by YAEC in its November 30, 2010, letter. After evaluating the exemption requests, the NRC staff believes that YAEC should be granted exemptions from the following requirements: 10 CFR 73.55(e)(10)(ii) and 10 CFR 73.55(g)(8)(iv). Section 73.55(e)(10)(ii) sets forth requirements for restricting access by waterborne vehicles and 10 CFR 73.55(g)(8)(iv) sets forth access authorization requirements. The remaining exemptions requested were determined either not to be applicable to the facility or are being met by the licensee's current PSP; therefore, these exemptions were denied. Additional information regarding the NRC (staff) evaluation is documented in a Safety Evaluation Report that contains Sensitive Unclassified Non-Safeguards Information and is being withheld from public inspection in accordance with 10 CFR 2.390.

In considering these exemption requests, the staff reviewed the current Yankee Nuclear Power Station Physical Security Plan (YNPS PSP) (Revision 18), dated November 28, 2006; and the NRC letter dated March 13, 2002, and its attachment, Amendment 156, which granted YNPS exemptions from certain requirements of the previous 10 CFR part 73. The NRC staff also reviewed the revised Power Reactor Security Rule, 10 CFR 73.55, which became effective on May 26, 2009 (74 FR 13926), to identify substantive changes affecting previously approved exemptions. In addition, the staff reviewed a 2009 inspection report prepared after conducting inspections of the licensee's facility, procedures, and PSP for compliance with all applicable regulations and NRC Orders. Based upon its review, the staff determined that current barriers and actions implemented under the Yankee Rowe ISFSI PSP meet the intent of the regulations

being exempted, and that granting the requested exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

The purpose of the regulations in 10 CFR 73.55 is to establish and maintain a physical protection system designed to protect against radiological sabotage. The function of 10 CFR 73.55(e)(10)(ii) is to restrict waterborne vehicle access and require performance of periodic surveillance of waterway approaches to ISFSIs. However, there are no pathways which allow waterborne vehicles to gain direct access to the ISFSI. Furthermore, YAEF employs site specific barriers as part of its NRC-approved PSP which are appropriate for the reduced radiological risk associated with a stand-alone ISFSI. The purpose of the regulations in 10 CFR 73.55(g)(8)(iv) is to ensure personnel trained as escorts be knowledgeable of where visitors would be working within the protected area and that visitors within the protected area will be escorted. The NRC staff determined that the NRC approved measures currently employed by YAEF in its PSP are appropriate for the reduced radiological risk to the public from the ISFSI and are consistent with the general performance standards in 10 CFR 73.55(b). Therefore, the NRC staff concludes that the exemptions do not pose an increased risk to public health and safety and are not inimical to the common defense and security. Given the above considerations, this exemption will not endanger life or property or the common defense and security.

As discussed above, the purpose of 10 CFR 73.55 is to protect against radiological sabotage. Granting YAEF an exemption from the requirements of 10 CFR 73.55(e)(10)(ii) and 10 CFR 73.55(g)(8)(iv) would not decrease the level of security currently in place at the Yankee Rowe ISFSI. In addition, granting exemptions to these regulations will not result in increased radiological risk to the public from operation of this general licensed, stand-alone ISFSI. Accordingly, the NRC staff has determined that, pursuant to 10 CFR 73.5, these exemptions are authorized by law and are otherwise in the public interest.

Granting exemptions from the requirements of 10 CFR 73.55(e)(10)(ii) and 73.55(g)(8)(iv) involves safeguards plans. A categorical exclusion for exemptions involving safeguard plans is allowed under 10 CFR 51.22(c)(25)(vi)(F) provided that the criteria in 10 CFR 51.22(c)(25)(i)-(v) are also satisfied. In its review of the exemption request, the NRC determined that, pursuant to 10 CFR 51.22(c)(25): (i) granting the exemptions neither involves a significant reduction in a margin of safety nor creates a new or different kind of accident from any accident previously evaluated, and thus no significant hazards considerations because there is no significant increase in either the probability or consequences of an accident previously evaluated; (ii) granting the exemptions would not produce a significant change in either the types or amounts of any effluents that may be released offsite because the requested exemptions neither change the effluents nor produce additional avenues of effluent release; (iii) granting the exemptions would not result in a significant increase in either occupational radiation exposure or public radiation exposure because the requested exemptions neither introduce new radiological hazards nor increase existing radiological hazards; (iv) granting the exemptions would not result in a significant construction impact because there are no construction activities associated with the requested exemptions; and; (v) granting the exemptions would not result in a significant increase in the potential for or consequences from radiological accidents because the exemptions neither reduce the level of security in place at the Yankee Rowe ISFSI nor create new accident precursors. Accordingly, this exemption meets the criteria for a categorical exclusion in 10 CFR 51.22(c)(25)(vi)(F).

### **3.0 CONCLUSION**

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. Therefore, the Commission hereby grants YAEC an

exemption from the 10 CFR 73.55(e)(10)(ii) requirement to restrict waterborne vehicle access and perform periodic surveillance of waterway approaches as well as the 10 CFR 73.55(g)(8)(iv) requirement for escort personnel to be generally knowledgeable of visitor activities. In addition, YAEC shall continue to follow the NRC approved ISFSI PSP and applicable NRC orders. As discussed in the preceding paragraph, the Commission has determined that this exemption meets the criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25)(vi)(F). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the granting of these exemptions. These exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 21st day of September, 2012.

FOR THE NUCLEAR REGULATORY COMMISSION

**/RA/**

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